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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 472

ISAIAH MITCHELL, 3D,

Petitioner,

vs.

TRIBUNE COMPANY, A CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT FOR THE FIRST DISTRICT OF ILLINOIS AND/OR THE SUPREME COURT OF ILLINOIS.

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THE BUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO



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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Isaiah Mitchell, 3d, *pro se*, prays that a writ of certiorari issue to review the judgment of the Appellate Court of the State of Illinois, First District, entered in the above-entitled case on June 1, 1951 and/or the order of the Supreme Court of the State of Illinois entered in the above-entitled case on October 12, 1951.

OPINION BELOW.

The opinion of the Appellate Court is reported in 343 Ill. App. 446; 99 N. E. 2d 397.

JURISDICTION.

The judgment of the Appellate Court of Illinois, First District was entered on June 1, 1951. (R. 33.) The order of the Supreme Court of the State of Illinois was entered on September 12, 1951. (R. 35.) The Jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3), and Rule 12 (1), 3rd paragraph, of the Supreme Court Rules.

QUESTIONS PRESENTED.

1. Whether the Court below erred in affirming the order to dismiss the action for libel?

2. Whether the court below erred when it did not pass on the Constitutional questions raised in the pleadings, under Section 1, of the Fourteenth Amendment?

STATUTES INVOLVED.

The pertinent statutory provisions are printed in the Appendix, *infra*, pp. 11-12.

STATEMENT.

The action herein is a suit for libel by the petitioner, plaintiff-appellant below, against the Tribune Company, a corporation, respondent, defendant-appellee, below. The complaint filed October 10, 1949, in the Superior Court of Cook County, averred that the respondent, publishers of the Chicago Sunday Tribune of October 10, 1948, and the Chicago Daily Tribune of October 11, 1948, published defamatory matter maliciously, falsely and libelously against the petitioner. Petitioner, a layman, unable to retain counsel, of necessity, had to prosecute his action *pro se* (R. 1, 2), with a demand for a jury trial. (R. 7.)

On November 7, 1949, respondent filed a motion to strike the complaint and dismiss the action. (R. 7.)

Petitioner filed an amended complaint on March 1, 1950. (R. 11-18.) The court entered an order, March 1, 1950, sustaining respondent's motion to strike the amended complaint and dismiss the action. (R. 18, 19.)

On March 31, 1950, petitioner filed a motion to vacate the order of March 1, 1950, and leave to file an amended complaint. (R. 20, 21.) The ruling of the court on the aforesaid amended complaint was, "Order this proffered complaint filed as Exhibit A, only," filed March 31, 1950. Order entered March 31, 1950, denied motion of petitioner to vacate the order entered March 1, 1950, and leave to file an amendment to the complaint. (R. 21-27.)

Notice of Appeal to Appellate Court of Illinois, First District, and Proof of Service, filed June 14, 1950. (R. 27, 28.)

Judgment of Superior Court of Cook County, affirmed, June 1, 1951. (R. 33.) Certificate of Jurisdictional amount and Stay of Mandate, pending disposition of petition for leave to appeal to the Supreme Court of Illinois, entered June 18, 1951. (R. 33.) Certificate of Clerk of the Appellate Court of Illinois, First District, June 19, 1951. (R. 33.)

Petition for Leave to Appeal from the Appellate Court, First District, to the Supreme Court of Illinois, filed July 28, 1951. (R. 34.) Petition for Leave to Appeal, denied, entered September 12, 1951. (R. 35.)

The Federal questions sought to be reviewed were raised in the court of original jurisdiction by a pleading. (R. 13, 14, 16, 17, 24.)

In the Appellate Court, the Constitutional question was raised in the Assignment of Errors, number 4, (B, 4) and argued in Point IV (B. 9).

The order of dismissal on the ground of no cause of action relieved the court of any duty to rule on the Constitutional question sought to be raised in the pleadings (R. 13, 14, 16, 17, 24), under the provision of Sec. 1, 14th Amendment to the Constitution of the United States, which petitioner set up his claim of denial of "Equal protection of the law," and the denial of title, rights, privileges and immunities, as belonging to the petitioner under the Constitution, as it appears in the record. (R. 13, 14, 16, 17, 24.)

The refusal of the court below to pass on the Federal question, raised in the assignment of errors, Number 4, expressed an opinion that the Constitutional rights of the petitioner did not merit judicial consideration, although there is no settled law or principle on the material issue raised in the instant case; it is fairly, a case of First Impression and should be passed on by the Supreme Court of the United States.

On appeal, the error assigned was number 4, in the Assignment of Errors for review. Petitioner apprised the court below that a Federal "right, privilege, or immunity" was intended to be raised for review.

The Illinois Supreme Court, by denial of Leave to Appeal, affirmed the judgment of the Appellate Court. Petitioner believes that result confers jurisdiction on this Court.

SPECIFICATION OF ERRORS TO BE URGED.

The Appellate Court of Illinois, First District erred in holding:

I.

No cause of action was stated.

II.

The matter was not libel *per se*.

III.

That averment of special damages was not properly alleged.

IV.

In affirming order of the court of original jurisdiction.

REASONS FOR GRANTING THE WRIT.

The decision of the court below in the instant case, was made on authority grounded on *Wright* v. *Woolworth*, 281 Ill. App. 495, an action for slander. The legal difference between libel and slander is so well settled that the Court's time will not be wasted on their fundamentals. In the above case the court held that calling complainant a "Negro" was not slander *per se*, and no special damages had been averred and proved, the judgment was reversed; further the plaintiff was known in her community as a white woman and the discrimination was really an action based on denial of civil rights under the Illinois law. The false and libelous statements made by the respondent were categorically denied in the complaint, "He who does not deny, admits," is one of the most ancient legal maxims. The respondent was put upon proof of the false and malicious printed publications; the court sustained his motion to strike and dismiss the action on the ground that the language complained against was not libelous *per se*, and that no special damages accrued were alleged. (R. 19.) This order was made erroneously as the principle that a cause of action for libel will be set out in *Adair* v. *Timbler*, 186 Ill. App. (1914), 133, at page 136 the court held:

> "It is not necessary in such a case to aver in the declaration, the facts constituting the malice, it is enough to allege that the writing was maliciously published; but it is not necessary to use the word 'maliciously,' for the word 'false' alone has been held to be sufficiently expressive of a malicious intent. *White* v. *Nicholls*, 3 How. (U. S.) 266, 290, 291."

Further, at page 137:

> "But each count of the declaration in this case charges the defendants with having wickedly and maliciously composed and published a false, malicious and defamatory libel concerning the plaintiff. That the matters alleged to be libelous were false and were published maliciously was admitted by the demurrer.
>
> "We think each of the publications charged is *per se* actionable. The judgment of the Circuit Court is reversed."

The above cited case was cited and followed in *Holtz* v. *Alton Telegraph Printing Co.*, 324 Ill. App. 1 (1944), at pages 2, 3, the court held that:

> "The motion to dismiss in this case admits that the matter was published, that the words were false, and that they were maliciously published, following *Adair* v. *Timbler*, 186 Ill. App. 133, and cases cited; * * *."

and at page 5,

> "* * * in determining whether a published article is libelous *per se*, the words must be taken in the sense which readers of common and reasonable understanding would ascribe to them, that is in their ordinary and common acceptance."

La Grange Press v. *Citizen Pub. Co.*, 252 Ill. App. 482, 485. Further, at page 8:

> "Entertaining the above views, we are of the opinion that the trial court erred in sustaining a motion dismissing the complaint in this case and in entering judgment for defendants in bar of action and costs, and therefore this cause is reversed and remanded with directions overrule said motion to dismiss."

Recognizing the above quoted citations as establishing a rule or principle of law, in Illinois, in *Christopher* v.

American News Co., 171 Fed. 275 (C. A. 7), (1948), Judge Minton, at page 276, stated that:

> " * * * Since the motion to dismiss admits that the article was published, that its contents were false, and that the publication was malicious, *Adair* v. *Tumbler*, 133, 137, the sole question before us is whether the admitted allegations in the complaint state a claim upon which relief may be granted."

The false and libelous words applied to petitioner, namely: "Chink" and "Negro" were not incidental to the subject matter of the articles, but those false words were used for the sole purpose of contempt and ridicule of the petitioner, and showed malice, particularly, since the other persons named in the articles (R. 6, 7, Exhibits A and B), were not delineated by words indicating race, nationality, or creed.

The dictionaries are the exponents of the popular meaning of the words of the language.

Illinois has not by statute or decision, declared the popular meaning of the word "negro," only where the Statute has defined the meaning of a word is the definition authoritative. In *Near* v. *Minnesota*, 283 U. S. 697, 711, it was held that actions for false accusations were to be found in the libel laws of the various states. The Illinois statute give a definition of libel (Ill. Rev. Stat. (1949) Ch. 38, Sec. 402) (Append., p. 12), petitioner based this action then and on Sec. 1, of the Fourteenth Amendment to the United States Constitution (Append., p. 11), and the Illinois Constitution, Article 2, Section 4 (Append., p. 11).

In seeking the jurisdiction of this Court, petitioner, on the grounds that the pleadings attempted to set up his claim of raising a federal question under Section 1, of the Fourteenth Amendment of the Constitution of the United States, is based on Chief Justice Taft's holdings

in *Truax* v. *Corrigan*, 257 U. S. 312, at pages 331, 332, 333, he, speaking for the Court:

> "This brings us to consider the effect of the Fourteenth amendment which forbids any state to deny to any person the equal protection of the laws. * * * a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgments only after trial so every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. * * * All men are equal before the law; * * * This is a government of laws not men; 'No man is above the law;' are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws. * * * They therefore embodied that spirit guaranty. 'The guaranty was aimed at undue favor and individual or class privilege on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process.'"

CONCLUSION.

For foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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December 5, 1951,
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